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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID J. GRAIBE,

Defendant and Appellant.

B206510

(Los Angeles County  
Super. Ct. No. BA324567)

APPEAL from an order of the Superior Court of Los Angeles County,  
John Fisher, Judge. Affirmed.

Linda Acaldo, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

David J. Graibe appeals from the judgment entered following his no contest plea to possession for sale of a controlled substance, cocaine (Health & Saf. Code, § 11351) and his admission that the substance exceeded four kilograms by weight within the meaning of Health and Safety Code section 11370.4, subdivision (a)(2).<sup>1</sup> Pursuant to the negotiated plea, he was sentenced to prison for a total of eight years composed of the middle term of three years plus five years for the weight enhancement<sup>2</sup> and other counts and allegations not admitted were dismissed.<sup>3</sup>

Appellant's motion for discovery of the informant was heard and denied. Appellant's motion to traverse and quash the wiretap warrant which led to the discovery of the contraband which formed the basis for the charges, was granted as to numbers 06-201, 06-222, and 06-239, and the District Attorney was ordered to provide a redacted copy of the affidavit to the court. The court ordered an in camera review to determine

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<sup>1</sup> His notice of appeal states it is from the denial of his motion for unsealing wiretap affidavit, his motion to traverse/quash wire tap warrant, and his motion for discovery of informant, all of which were heard and denied prior to his no contest plea.

<sup>2</sup> As a result of a probation violation, he was sentenced to an additional eight months.

<sup>3</sup> Appellant had been charged in count 1 with conspiracy to possess marijuana for sale and to sell or transport marijuana (Pen. Code, § 182, subd. (a)(1); Health & Saf. Code, §§ 11359, 11360), in count 2 with possession of marijuana for sale (Health & Saf. Code, § 11359), in count 3 with the sale or transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)), in count 4 with conspiracy to possess a controlled substance for sale and to sell or transport a controlled substance (Pen. Code, § 182, subd. (a)(1); Health & Saf. Code, §§ 11351, 11352), in count 5 with possession for sale of a controlled substance (Health & Saf. Code, § 11351), and in count 6 with the sale or transportation of a controlled substance, cocaine (Health & Saf. Code, § 11352, subd. (a)). It was further alleged, as to counts 4, 5, and 6, that the substance exceeded 10 kilograms by weight within the meaning of Health and Safety Code section 11370.4, subdivision (a)(3). Prior to appellant's plea, the information was amended to add a lesser included weight enhancement pursuant to Health and Safety Code section 11370.4, subdivision (a)(2).

whether any portion of the probable cause affidavits should remain sealed pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948.<sup>4</sup>

According to the probation report, “On November 2, 2006, at approximately 7:00 a.m., Los Angeles police officers and United States drug enforcement agents were conducting surveillance of [appellant’s] residence regarding a narcotics investigation that dated back to September 12, 2006. A wire tap was put on the phones of [appellant] and his father, co-defendant Jacobo Graibe. At 11:26 a.m., drug enforcement agents intercepted a call between [appellant] and subject Gustavo Chavez indicating that Chavez was on his way to the Gardena Supermarket. At 11:39 a.m., another call was intercepted between Chavez and [appellant] that indicated that co-defendant Jacobo Graibe would wait for Chavez at the Gardena Supermarket. At 11:40 a.m., DEA agents observed [co-defendant] drive his car to the . . . supermarket and open the trunk of the vehicle for Chavez, who removed a red shopping bag from the trunk and returned to his GMC pickup truck and drove away.” A subsequent search of Chavez’s vehicle resulted in the recovery of the red shopping bag, which contained approximately six pounds of marijuana.

Also reported, on November 8, 2006, appellant and the co-defendant were involved in the sale of 15 bricks of cocaine.

After review of the record, appellant’s court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On August 7, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

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<sup>4</sup> On November 12, 2008, we ordered that the record on appeal be augmented to include a sealed transcript of the in camera proceedings. Additionally, we ordered that copies of the affidavits, redacted and non-redacted, be marked as court exhibits, sealed, and transmitted to this court. On February 27, 2009, the Augmented/Supplemental Record was filed in this court. We have reviewed same.

“An order denying a motion to disclose the identity of an informant is not subject to review on appeal after the defendant has entered a plea of guilty. [Citation.] This is so because the purpose of the motion relates solely to the defendant’s guilt or innocence, an issue which is removed by the guilty plea.” (*People v. Castro* (1974) 42 Cal.App.3d 960, 963.) “In contrast, an exception to the general rule barring appeal is set forth in Penal Code section 1538.5, subdivision (m), which provides, in pertinent part, that ‘[a] defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty [or no contest]. Such review on appeal may be obtained by the defendant provided that at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence.’ Accordingly, if defendant’s challenge to the sealing of the affidavit was directed to the legality of the search, it is cognizable on appeal pursuant to that statutory exception.” (*People v. Hobbs, supra*, 7 Cal.4th at p. 956.)

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

#### DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.